



concluding there was no jurisdiction in this matter. Respondent admits there is jurisdiction under the Act because claimant's accident occurred in Leavenworth, Kansas. Respondent further admits that it has provided treatment for what it considers a compensable injury to claimant's right shoulder. Respondent, however, maintains that the ALJ's denial of further medical treatment and temporary total disability benefits should be affirmed because claimant failed to meet his burden of proof that he sustained an accidental injury arising out of and in the course of his employment which resulted in the need for treatment to his left shoulder.

The issues to be decided are as follows:

1. Whether the ALJ erred in concluding there was no jurisdiction under the Act; and
2. Whether the claimant sustained his burden of establishing an accidental injury to his left shoulder arising out of and in the course of his employment with respondent.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Respondent concedes claimant sustained an accidental injury to his right shoulder on April 21, 2003. That accident is the subject of an E-1 Application filed with the Division of Workers Compensation on April 23, 2004. The E-1 lists the location of the accident as Leavenworth, Kansas and lists both shoulders as having sustained injury in the accident. Respondent admits notice and timely written claim for this accident as it relates to the right shoulder only.<sup>1</sup> Medical treatment was provided to the right shoulder first at Concentra and later with Dr. Alexandra Strong, an orthopaedic physician. Dr. Strong diagnosed a full thickness tear in the right rotator cuff and performed surgery on June 23, 2003. After a period of recuperation which included physical therapy, claimant was released on February 17, 2004 to return to work with restrictions.

Claimant returned to Concentra in March 2004 complaining of left shoulder complaints. He was again referred to Dr. Strong who diagnosed a full thickness tear in the left shoulder. She took him off work as of March 31, 2004 and recommended surgery. Respondent has refused to provide this treatment or monetary benefits contending that claimant's April 2003 injury is limited to his right shoulder only. Respondent contends any complaints relative to the left shoulder bear no causal relationship to his work-related accident.

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<sup>1</sup> P.H. Trans. at 3.

At the preliminary hearing, claimant testified that as he was removing some eye bolts and using a pry bar, he noticed a pop in his right shoulder.<sup>2</sup> Claimant took a break and 10 minutes later, he returned to the same task and as he was using his left shoulder, it too popped. When the eye bolts finally came out, his right arm was in extreme pain and he knew he needed to see a doctor.<sup>3</sup> Claimant was asked what other parts of his body hurt at that time and he responded “Well, I had pain in my left shoulder, but my right was in so much pain it kind of overrode my left shoulder.”<sup>4</sup>

Claimant testified he advised Jerry Reinhart, the superintendent for his employer, and Neil Rogers, respondent’s owner, that he injured both arms. He further testified that he told the staff at Concentra as well as Dr. Strong and the physical therapists that he had hurt both shoulders, not just the right, but that the right was far more painful. Dr. Strong’s records show a complaint regarding the left shoulder was first noted on November 18, 2003. The physical therapists records reference left shoulder complaints for the first time on January 8, 2004. Claimant denies any other accidents since April 2003 that would have caused his present complaints of pain in the left shoulder. He admits he sustained an earlier injury to both arms on August 6, 2002, but he had been released from treatment without any restrictions and had no difficulty returning to work following that injury.

After hearing this testimony, the ALJ issued an Order that denied claimant’s request for medical treatment and temporary total disability benefits. The basis for his denial was a lack of jurisdiction under the Act. According to the ALJ, he found the accident occurred in Missouri.

Quite clearly, the ALJ’s conclusion is inaccurate. There is no dispute between the parties that claimant was injured on April 21, 2003 in Leavenworth, Kansas. Respondent concedes “[j]urisdiction is proper because the accident occurred in Kansas.”<sup>5</sup> This issue was not discussed at any time during the preliminary hearing nor did respondent even allege lack of jurisdiction at any point during the proceedings. Although respondent’s place of business is in Missouri, the fact that the accident occurred here in Kansas satisfies the jurisdictional prerequisite. Thus, the ALJ’s Order must be reversed.

The more difficult decision is whether to address the underlying compensability question. The dispute, as presently framed, is not whether claimant is presently in need of the treatment to his left shoulder. Rather, it is whether he has sustained his burden of establishing that he injured his left shoulder in the April 21, 2003 accident. It does not

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<sup>2</sup> *Id.* at 7.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Respondent’s Brief at 2 (filed Sept. 16, 2004).

appear, at least from the ALJ's Order, that he even considered that issue as his analysis understandably ceased once he concluded there was no jurisdiction. As a matter of fairness, the Board believes this case should be remanded to the ALJ for consideration of the issue of whether claimant's left shoulder complaints bear any causal connection to the April 21, 2003 accident.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven J. Howard dated August 11, 2004, is reversed and remanded with instruction to consider whether claimant's left shoulder complaints are causally related to the April 21, 2003 accident.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September 2004.

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BOARD MEMBER

c: Keith L. Mark, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
Steven J. Howard, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director